

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 4, 2013

**SENATE BILL**

**No. 155**

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**Introduced by Senator Padilla**

January 31, 2013

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An act to amend Sections 3006, 3008, 3012, 3050, 3050.7, 3052, 3056, 3057, 3062, 3063, 3064, 3065, 3065.1, 3066, 3067, 3069.1, 11713.3, and 11713.13 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 155, as amended, Padilla. Vehicles: motor vehicle manufacturers and distributors.

Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee. Existing law prescribes procedures to be followed by franchisors, franchisees, and the board regarding claims for warranty reimbursement or incentive compensation. Existing law authorizes franchisors to conduct audits of franchisee warranty records and incentive records on a reasonable basis, and authorizes a franchisor to audit the franchisee's incentive records for 18 months, and warranty records for 12 months, after a claim is paid or credit issued. Existing law prohibits the disapproval of franchisee claims except for good cause, as specified, and requires that a notice of disapproval state the specific grounds upon which the disapproval is based. Existing law gives a franchisee one year from receipt of the notice of disapproval of an incentive compensation payment to appeal the disapproval to the franchisor and file a protest with the board.

This bill would revise these provisions to require, among other things, the franchisor to provide the franchisee with the specific grounds upon

which any previously approved claims will be charged back, if the franchisor disapproves of a previously approved claim after an audit, and to prohibit a previously approved claim from being charged back to the franchisee except under certain circumstances, including when the claim is false or fraudulent. The bill would require the franchisor to provide a reasonable appeal process to allow the franchisee to respond to any disapproval with additional supporting documentation or information rebutting the disapproval, as provided. The bill would authorize the audit of a franchisee's records for ~~6~~ 9 months after a claim is paid or credit is issued, as specified. The bill would give a franchisee ~~one year~~ 6 months from the date of receipt of a specified written notice to file a protest with the board, and would specify that in the protest proceeding the franchisor has the burden of proof.

Existing law requires every vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing. Existing law also requires the franchisor to file a copy of its warranty reimbursement schedule or formula with the board.

This bill would additionally require a franchisor to adequately and fairly compensate each of its franchisees for labor and parts used to provide diagnostic services under a warranty. The bill would also require, if the warranty reimbursement schedule or formula provides franchisee labor compensation on a flat-rate basis, the franchisor to allow the franchisee to use a published, nationally recognized, flat-rate labor time guide as the basis for determining the amount of time allocable for warranty repairs if the franchisee primarily uses the time guide to compute technician flat-rate compensation and charges for nonwarranty labor.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified practices, including requiring a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions.

This bill would prohibit a required facility alteration, expansion, or addition from being deemed reasonable if it requires that the dealer

purchase goods or services from a specific vendor if substantially similar goods or services are available from another vendor, *except as specified*. The bill would also prohibit the establishing or maintaining a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer's right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless certain requirements are satisfied. The bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from taking or threatening to take any adverse action against a dealer *pursuant to a published export or sale-for-resale prohibition* because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle, ~~unless the adverse action is permitted by contractual terms binding on the dealer and the dealer had actual knowledge~~ *the dealer knew or should have known* of the customer's intent to export or resell the vehicle, as specified. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The distribution, sale, and service of new motor vehicles in
- 4 the State of California vitally affect the general economy of this
- 5 state and the public welfare.
- 6 (b) The new motor vehicle franchise system, which operates
- 7 within a strictly defined and highly regulated statutory scheme,
- 8 assures the consuming public of a well-organized distribution
- 9 system for the availability and sale of new motor vehicles
- 10 throughout the state, provides a network of quality warranty, recall,
- 11 and repair facilities to maintain those vehicles, and creates a

1 cost-effective method for the state to police those systems through  
2 the licensing and regulation of private sector franchisors and  
3 franchisees.

4 (c) Over the past decade, franchisors have unilaterally and  
5 gradually reduced the amount of flat-rate labor time allocable to  
6 warranty repairs by an unreasonable amount, and have failed to  
7 properly reimburse dealers for repairing vehicles to conform to  
8 the warranty established by the franchisor. Over this period,  
9 franchisors have also regularly denied dealer warranty and  
10 incentive program claims for technical reasons without providing  
11 any rights to rebut the denial or correct technical errors through  
12 reasonable appeal processes, which has resulted in dealers not  
13 being reimbursed when repairing vehicles under the manufacturer  
14 warranty or applying incentive money to a sale.

15 (d) Franchisors implement punitive policies toward dealers  
16 when vehicles sold by dealers end up being exported, even when  
17 the export takes place without dealer knowledge, resulting in  
18 dealers being charged back for incentive funding that the dealer  
19 accounted for in making the initial sale.

20 (e) Franchisors measure dealership sales, service, and customer  
21 service performance against standards that are established  
22 unilaterally and without dealer input. Many of these performance  
23 standards are based upon national or statewide performance  
24 averages that bear no resemblance to a dealer's local market.  
25 Failure to adhere to these standards can result in disqualification  
26 from incentive programs, imposition of unrealistic working capital  
27 requirements, and even termination of a franchise agreement.

28 (f) Franchisors frequently establish facility models that require  
29 dealers to purchase goods or services from specific vendors, many  
30 of which are located outside of the United States. Those  
31 requirements are generally nonnegotiable, even if a dealer can  
32 obtain substantially similar goods or services from a local  
33 California vendor.

34 (g) It is the intent of this act to ensure that new motor vehicle  
35 dealers are treated fairly by their franchisors, that dealers are  
36 reasonably compensated for performing warranty repairs on behalf  
37 of their franchisor, that dealers are not punished when vehicles are  
38 exported without dealer knowledge, that performance standards  
39 take into account local market conditions, and that dealers be

1 allowed to obtain required goods or services through vendors of  
2 their choosing.

3 SEC. 2. Section 3006 of the Vehicle Code is amended to read:

4 3006. The board shall organize and elect a president from  
5 among its members for a term of one year at the first meeting of  
6 each year. The newly elected president shall assume his or her  
7 duties at the conclusion of the meeting at which he or she was  
8 elected. Reelection to office during membership is unrestricted.

9 SEC. 3. Section 3008 of the Vehicle Code is amended to read:

10 3008. (a) All meetings of the board shall be open and public,  
11 and all persons shall be permitted to attend any meeting of the  
12 board, except that the board may hold executive sessions to  
13 deliberate on the decision to be reached upon the evidence  
14 introduced in a proceeding conducted in accordance with Chapter  
15 5 (commencing with Section 11500) of Part 1 of Division 3 of  
16 Title 2 of the Government Code.

17 (b) At all meetings of the board, open or executive, involving  
18 an appeal from a decision of the Director of Motor Vehicles, the  
19 director or his or her authorized representative may attend, present  
20 the position of the department, and then shall absent himself or  
21 herself from any executive session at the request of any member  
22 of the board.

23 (c) Within the limitations of its powers and authority, and in  
24 the event of disagreement between the board and the director  
25 regarding the decision to be reached, the decision of the board  
26 shall be final.

27 SEC. 4. Section 3012 of the Vehicle Code is amended to read:

28 3012. Each member of the board shall receive a per diem of  
29 one hundred dollars (\$100) for each day actually spent in the  
30 discharge of official duties, and he or she shall be reimbursed for  
31 traveling and other expenses necessarily incurred in the  
32 performance of his or her duties. The per diem and reimbursement  
33 shall be wholly defrayed from funds that shall be provided in the  
34 annual budget of the department.

35 SEC. 5. Section 3050 of the Vehicle Code is amended to read:

36 3050. The board shall do all of the following:

37 (a) Adopt rules and regulations in accordance with Chapter 3.5  
38 (commencing with Section 11340) of Part 1 of Division 3 of Title  
39 2 of the Government Code governing those matters that are  
40 specifically committed to its jurisdiction.

(b) Hear and determine, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for in this chapter from a decision arising out of the department.

(c) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. After that consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed

1 pursuant to Article 4 (commencing with Section 3060), unless all  
2 parties to the protest stipulate otherwise.

3 (e) Notwithstanding subdivisions (c) and (d), the courts have  
4 jurisdiction over all common law and statutory claims originally  
5 cognizable in the courts. For those claims, a party may initiate an  
6 action directly in any court of competent jurisdiction.

7 SEC. 6. Section 3050.7 of the Vehicle Code is amended to  
8 read:

9 3050.7. (a) The board may adopt stipulated decisions and  
10 orders, without a hearing pursuant to Section 3066, to resolve one  
11 or more issues raised by a protest or petition filed with the board.  
12 Whenever the parties to a protest or petition submit a proposed  
13 stipulated decision and order of the board, a copy of the proposed  
14 stipulated decision and order shall be transmitted by the executive  
15 director of the board to each member of the board. The proposed  
16 stipulated decision and order shall be deemed to be adopted by the  
17 board unless a member of the board notifies the executive director  
18 of the board of an objection thereto within 10 days after that board  
19 member has received a copy of the proposed stipulated decision  
20 and order.

21 (b) If the board adopts a stipulated decision and order to resolve  
22 a protest filed pursuant to Section 3060 or 3070 in which the parties  
23 stipulate that good cause exists for the termination of the franchise  
24 of the protestant, and the order provides for a conditional or  
25 unconditional termination of the franchise of the protestant,  
26 paragraph (2) of subdivision (a) of Section 3060 and paragraph  
27 (2) of subdivision (a) of Section 3070, which require a hearing to  
28 determine whether good cause exists for termination of the  
29 franchise, is inapplicable to the proceedings. If the stipulated  
30 decision and order provides for an unconditional termination of  
31 the franchise, the franchise may be terminated without further  
32 proceedings by the board. If the stipulated decision and order  
33 provides for the termination of the franchise, conditioned upon the  
34 failure of a party to comply with specified conditions, the franchise  
35 may be terminated upon a determination, according to the terms  
36 of the stipulated decision and order, that the conditions have not  
37 been met. If the stipulated decision and order provides for the  
38 termination of the franchise conditioned upon the occurrence of  
39 specified conditions, the franchise may be terminated upon a

1 determination, according to the terms of the stipulated decision  
2 and order, that the stipulated conditions have occurred.

3 SEC. 7. Section 3052 of the Vehicle Code is amended to read:

4 3052. (a) On or before the 10th day after the last day on which  
5 reconsideration of a final decision of the department can be ordered,  
6 the applicant or licensee may file an appeal with the executive  
7 director of the board. The appeal shall be in writing and shall state  
8 the grounds therefor. A copy of the appeal shall be mailed by the  
9 appellant to the department, and the department shall thereafter  
10 be considered as a party to the appeal. The right to appeal is not  
11 affected by failure to seek reconsideration before the department.

12 (b) An appeal is considered to be filed on the date it is received  
13 in the office of the executive director of the board, except that an  
14 appeal mailed to the executive director by means of registered mail  
15 is considered to be filed with the executive director on the postmark  
16 date.

17 (c) The appeal shall be accompanied by evidence that the  
18 appellant has requested the administrative record of the department  
19 and advanced the cost of preparation of that record. The complete  
20 administrative record includes the pleadings, all notices and orders  
21 issued by the department, any proposed decision by an  
22 administrative law judge, the exhibits admitted or rejected, the  
23 written evidence, and any other papers in the case. All parts of the  
24 administrative record requested by the appellant may be filed with  
25 the appeal together with the appellant's points and authorities. If  
26 the board orders the filing of additional parts of the administrative  
27 record, the board may order prior payment by the appellant of the  
28 cost of providing those additional parts.

29 (d) Except as provided in subdivisions (e) and (f), a decision of  
30 the department may not become effective during the period in  
31 which an appeal may be filed, and the filing of an appeal shall stay  
32 the decision of the department until a final order is made by the  
33 board.

34 (e) When a decision has ordered revocation of a dealer's license,  
35 the department may, on or before the last day upon which an appeal  
36 may be filed with the board, petition the board to order the decision  
37 of the department into effect.

38 (f) With respect to the department's petition filed pursuant to  
39 subdivision (e), the department shall have the burden of proof. The  
40 board shall act upon the petition within 14 days or prior to the



1 effective date of the department's decision, whichever is later. The  
2 board may order oral argument on the petition before the board.

3 SEC. 8. Section 3056 of the Vehicle Code is amended to read:

4 3056. When the order reverses the decision of the department,  
5 the board may direct the department to reconsider the matter in  
6 the light of its order and may direct the department to take any  
7 further action as is specially enjoined upon it by law. In all cases  
8 the board shall enter its order within 60 days after the filing of the  
9 appeal, except in the case of unavoidable delay in supplying the  
10 administrative record, in which event the board shall make its final  
11 order within 60 days after receipt of the record.

12 SEC. 9. Section 3057 of the Vehicle Code is amended to read:

13 3057. The board shall fix an effective date for its orders not  
14 more than 30 days from the day the order is served upon the parties  
15 or remand the case to the department for fixing an effective date.  
16 A final order of the board shall be in writing and copies of the  
17 order shall be delivered to the parties personally or sent to them  
18 by registered mail. The order shall be final upon its delivery or  
19 mailing and no reconsideration or rehearing by the board shall be  
20 permitted.

21 SEC. 10. Section 3062 of the Vehicle Code is amended to read:

22 3062. (a) (1) Except as otherwise provided in subdivision (b),  
23 if a franchisor seeks to enter into a franchise establishing an  
24 additional motor vehicle dealership, or seeks to relocate an existing  
25 motor vehicle dealership, that has a relevant market area within  
26 which the same line-make is represented, the franchisor shall, in  
27 writing, first notify the board and each franchisee in that line-make  
28 in the relevant market area of the franchisor's intention to establish  
29 an additional dealership or to relocate an existing dealership.  
30 Within 20 days of receiving the notice, satisfying the requirements  
31 of this section, or within 20 days after the end of an appeal  
32 procedure provided by the franchisor, a franchisee required to be  
33 given the notice may file with the board a protest to the proposed  
34 dealership establishment or relocation described in the franchisor's  
35 notice. If, within this time, a franchisee files with the board a  
36 request for additional time to file a protest, the board or its  
37 executive director, upon a showing of good cause, may grant an  
38 additional 10 days to file the protest. When a protest is filed, the  
39 board shall inform the franchisor that a timely protest has been  
40 filed, that a hearing is required pursuant to Section 3066, and that

1 the franchisor may not establish the proposed dealership or relocate  
2 the existing dealership until the board has held a hearing as  
3 provided in Section 3066, nor thereafter, if the board has  
4 determined that there is good cause for not permitting the  
5 establishment of the proposed dealership or relocation of the  
6 existing dealership. In the event of multiple protests, hearings may  
7 be consolidated to expedite the disposition of the issue.

8 (2) If a franchisor seeks to enter into a franchise that authorizes  
9 a satellite warranty facility to be established at, or relocated to, a  
10 proposed location that is within two miles of a dealership of the  
11 same line-make, the franchisor shall first give notice in writing of  
12 the franchisor's intention to establish or relocate a satellite warranty  
13 facility at the proposed location to the board and each franchisee  
14 operating a dealership of the same line-make within two miles of  
15 the proposed location. Within 20 days of receiving the notice  
16 satisfying the requirements of this section, or within 20 days after  
17 the end of an appeal procedure provided by the franchisor, a  
18 franchisee required to be given the notice may file with the board  
19 a protest to the establishing or relocating of the satellite warranty  
20 facility. If, within this time, a franchisee files with the board a  
21 request for additional time to file a protest, the board or its  
22 executive director, upon a showing of good cause, may grant an  
23 additional 10 days to file the protest. When a protest is filed, the  
24 board shall inform the franchisor that a timely protest has been  
25 filed, that a hearing is required pursuant to Section 3066, and that  
26 the franchisor may not establish or relocate the proposed satellite  
27 warranty facility until the board has held a hearing as provided in  
28 Section 3066, nor thereafter, if the board has determined that there  
29 is good cause for not permitting the satellite warranty facility. In  
30 the event of multiple protests, hearings may be consolidated to  
31 expedite the disposition of the issue.

32 (3) The written notice shall contain, on the first page thereof in  
33 at least 12-point bold type and circumscribed by a line to segregate  
34 it from the rest of the text, the following statement:

35  
36 "NOTICE TO DEALER: You have the right to file a protest  
37 with the NEW MOTOR VEHICLE BOARD in Sacramento and  
38 have a hearing on your protest under the terms of the California  
39 Vehicle Code if you oppose this action. You must file your protest  
40 with the board within 20 days of your receipt of this notice, or

1 within 20 days after the end of any appeal procedure that is  
2 provided by us to you. If within this time you file with the board  
3 a request for additional time to file a protest, the board or its  
4 executive director, upon a showing of good cause, may grant you  
5 an additional 10 days to file the protest.”

6  
7 (b) Subdivision (a) does not apply to either of the following:

8 (1) The relocation of an existing dealership to a location that is  
9 both within the same city as, and within one mile from, the existing  
10 dealership location.

11 (2) The establishment at a location that is both within the same  
12 city as, and within one-quarter mile from, the location of a  
13 dealership of the same line-make that has been out of operation  
14 for less than 90 days.

15 (c) Subdivision (a) does not apply to a display of vehicles at a  
16 fair, exposition, or similar exhibit if actual sales are not made at  
17 the event and the display does not exceed 30 days. This subdivision  
18 may not be construed to prohibit a new vehicle dealer from  
19 establishing a branch office for the purpose of selling vehicles at  
20 the fair, exposition, or similar exhibit, even though the event is  
21 sponsored by a financial institution, as defined in Section 31041  
22 of the Financial Code or by a financial institution and a licensed  
23 dealer. The establishment of these branch offices, however, shall  
24 be in accordance with subdivision (a) where applicable.

25 (d) For the purposes of this section, the reopening of a dealership  
26 that has not been in operation for one year or more shall be deemed  
27 the establishment of an additional motor vehicle dealership.

28 (e) As used in this section, the following definitions apply:

29 (1) “Motor vehicle dealership” or “dealership” means an  
30 authorized facility at which a franchisee offers for sale or lease,  
31 displays for sale or lease, or sells or leases new motor vehicles.

32 (2) “Satellite warranty facility” means a facility operated by a  
33 franchisee where authorized warranty repairs and service are  
34 performed and the offer for sale or lease, the display for sale or  
35 lease, or the sale or lease of new motor vehicles is not authorized  
36 to take place.

37 SEC. 11. Section 3063 of the Vehicle Code is amended to read:

38 3063. In determining whether good cause has been established  
39 for not entering into a franchise or relocating an existing dealership  
40 of the same line-make, the board shall take into consideration the

1 existing circumstances, including, but not limited to, all of the  
2 following:

3 (a) Permanency of the investment.

4 (b) Effect on the retail motor vehicle business and the consuming  
5 public in the relevant market area.

6 (c) Whether it is injurious to the public welfare for an additional  
7 franchise to be established or an existing dealership to be relocated.

8 (d) Whether the franchisees of the same line-make in the relevant  
9 market area are providing adequate competition and convenient  
10 consumer care for the motor vehicles of the line-make in the market  
11 area, which shall include the adequacy of motor vehicle sales and  
12 service facilities, equipment, supply of vehicle parts, and qualified  
13 service personnel.

14 (e) Whether the establishment of an additional franchise would  
15 increase competition and therefore be in the public interest.

16 (f) For purposes of this section, the terms “motor vehicle  
17 dealership” and “dealership” shall have the same meaning as  
18 defined in Section 3062.

19 SEC. 12. Section 3064 of the Vehicle Code is amended to read:

20 3064. (a) Every franchisor shall specify to its franchisees the  
21 delivery and preparation obligations of the franchisees prior to  
22 delivery of new motor vehicles to retail buyers. A copy of the  
23 delivery and preparation obligations, which shall constitute the  
24 franchisee’s only responsibility for product liability between the  
25 franchisee and the franchisor but shall not in any way affect the  
26 franchisee’s responsibility for product liability between the  
27 purchaser and either the franchisee or the franchisor, and a schedule  
28 of compensation to be paid to franchisees for the work and services  
29 they shall be required to perform in connection with those delivery  
30 and preparation obligations shall be filed with the board by  
31 franchisors, and shall constitute the compensation as set forth on  
32 the schedule. The schedule of compensation shall be reasonable,  
33 with the reasonableness thereof being subject to the approval of  
34 the board, if a franchisee files a notice of protest with the board.  
35 In determining the reasonableness of the schedules, the board shall  
36 consider all relevant circumstances, including, but not limited to,  
37 the time required to perform each function that the dealer is  
38 obligated to perform and the appropriate labor rate.

39 (b) Upon delivery of the vehicle, the franchisee shall give a  
40 copy of the delivery and preparation obligations to the purchaser

1 and a written certification that the franchisee has fulfilled these  
2 obligations.

3 SEC. 13. Section 3065 of the Vehicle Code is amended to read:

4 3065. (a) Every franchisor shall properly fulfill every warranty  
5 agreement made by it and adequately and fairly compensate each  
6 of its franchisees for labor and parts used to fulfill that warranty  
7 when the franchisee has fulfilled warranty obligations of  
8 diagnostics, repair, and servicing and shall file a copy of its  
9 warranty reimbursement schedule or formula with the board. The  
10 warranty reimbursement schedule or formula shall be reasonable  
11 with respect to the time and compensation allowed to the franchisee  
12 for the warranty diagnostics, repair, and servicing, and all other  
13 conditions of the obligation. If the warranty reimbursement  
14 schedule or formula provides compensation for franchisee labor  
15 on a flat-rate basis, the franchisor shall allow the franchisee to use  
16 a published, nationally recognized, flat-rate labor time guide as  
17 the basis for determining the amount of time allocable for warranty  
18 repairs if the franchisee primarily uses the time guide to compute  
19 technician flat-rate compensation and charges for nonwarranty  
20 labor. The reasonableness of the warranty reimbursement schedule  
21 or formula shall be determined by the board if a franchisee files a  
22 protest with the board.

23 (b) In determining the adequacy and fairness of the  
24 compensation, the franchisee's effective labor rate charged to its  
25 various retail customers may be considered together with other  
26 relevant criteria.

27 (c) If any franchisor disallows a franchisee's claim for a  
28 defective part, alleging that the part, in fact, is not defective, the  
29 franchisor shall return the part alleged not to be defective to the  
30 franchisee at the expense of the franchisor, or the franchisee shall  
31 be reimbursed for the franchisee's cost of the part, at the  
32 franchisor's option.

33 (d) (1) All claims made by franchisees pursuant to this section  
34 shall be either approved or disapproved within 30 days after their  
35 receipt by the franchisor. Any claim not specifically disapproved  
36 in writing within 30 days from receipt by the franchisor shall be  
37 deemed approved on the 30th day. All claims made by franchisees  
38 under this section and Section 3064 for labor and parts shall be  
39 paid within 30 days after approval.

(2) A franchisor shall not disapprove a claim unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall not disapprove a claim based upon an extrapolation from a sample of claims.

(3) When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisee shall have 30 days from the date of receipt of the notice to cure the noncompliance. If the disapproval is rebutted, or any noncompliance is reasonably cured within that 30-day period, the franchisor shall approve the claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise invokes the appeal process described in paragraph (3), and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial, which shall contain the following statement on the first page, in at least 12-point boldface type and circumscribed by a line to segregate it from the rest of the text:

“NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF YOUR WARRANTY CLAIM, OR OTHERWISE APPEAL DENIAL OF YOUR WARRANTY CLAIM.

You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest this denial under the provisions of the California

1 Vehicle Code. You must file your protest with the board within  
2 ~~one year~~ *six months* after receiving this notice.”

3  
4 (5) Failure to approve or pay within the above specified time  
5 limits, in individual instances for reasons beyond the reasonable  
6 control of the franchisor, shall not constitute a violation of this  
7 article.

8 (6) Within ~~one year~~ *six months* after either receipt of the written  
9 notice described in paragraph (3) or paragraph (4), whichever is  
10 later, a franchisee may file a protest with the board for  
11 determination of whether the franchisor complied with the  
12 requirements of this subdivision. In any protest pursuant to this  
13 subdivision, the franchisor shall have the burden of proof.

14 (e) (1) Audits of franchisee warranty records may be conducted  
15 by the franchisor on a reasonable basis for a period of ~~six~~ *nine*  
16 months after a claim is paid or credit issued, and only if the  
17 franchisor has substantial evidence of a pattern of improper  
18 warranty claims, including, but not limited to, a recent significant  
19 deviation between the value or number of warranty claims made  
20 by the franchisee and the average value or number of warranty  
21 claims made by similarly sized dealers of the same line-make.

22 (2) Previously approved claims shall not be disapproved or  
23 charged back to the franchisee unless the claim is false or  
24 fraudulent, repairs were not properly made, repairs were  
25 inappropriate to correct a nonconformity with the written warranty  
26 due to an improper act or omission of the franchisee, or for material  
27 noncompliance with reasonable and nondiscriminatory  
28 documentation and administrative claims submission requirements.  
29 A franchisor shall not disapprove or chargeback a claim based  
30 upon an extrapolation from a sample of claims.

31 (3) If the franchisor disapproves of a previously approved claim  
32 following an audit, the franchisor shall provide to the franchisee,  
33 within 30 days after the audit, a written disapproval notice stating  
34 the specific grounds upon which the claim is disapproved. The  
35 franchisor shall provide a reasonable appeal process allowing the  
36 franchisee a reasonable period of not less than ~~45~~ *30* days after  
37 receipt of the written disapproval notice to respond to any  
38 disapproval with additional supporting documentation or  
39 information rebutting the disapproval, with the period to be  
40 commensurate with the volume of claims under consideration. If

1 the franchisee rebuts any disapproval or reasonably cures any  
2 noncompliance relating to a claim, the franchisor shall not  
3 chargeback the franchisee for that claim.

4 (4) If the franchisee provides additional supporting  
5 documentation or information purporting to rebut the disapproval  
6 or attempts to cure noncompliance relating to the claim and the  
7 franchisor continues to deny the claim, the franchisor shall provide  
8 the franchisee with a written notification of the final denial, which  
9 shall contain the following statement on the first page, in at least  
10 12-point boldface type and circumscribed by a line to segregate it  
11 from the rest of the text:

12  
13 “NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT  
14 TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF  
15 YOUR WARRANTY CLAIM, OR OTHERWISE APPEAL  
16 DENIAL OF YOUR WARRANTY CLAIM.

17  
18 “You have the right to file a protest with the NEW MOTOR  
19 VEHICLE BOARD in Sacramento and have a hearing in which  
20 you may protest this denial under the provisions of the California  
21 Vehicle Code. You must file your protest with the board within  
22 ~~one year~~ *six months* after receiving this notice.

23  
24 “WE WILL CHARGE YOU FOR THE DENIED CLAIMS  
25 WITHIN 45 TO 90 DAYS OF THIS NOTICE UNLESS YOU  
26 FILE A PROTEST WITH THE BOARD PRIOR TO  
27 CHARGEBACK.”

28  
29 (5) The franchisor shall not chargeback the franchisee until 45  
30 days after receipt of the written notice described in paragraph (3)  
31 or paragraph (4), whichever is later. Any chargeback to a franchisee  
32 for warranty parts or service compensation shall be made within  
33 90 days of receipt of that written ~~notice~~ *notice*. If the franchisee  
34 files a protest pursuant to this subdivision prior to the franchisor’s  
35 chargeback for denied claims, the franchisor shall not offset or  
36 otherwise undertake to collect the chargeback until the board issues  
37 a final order on the protest. *If the board sustains the chargeback*  
38 *or the protest is dismissed with prejudice, the franchisor shall have*  
39 *90 days following issuance of the final order or the dismissal with*



1 *prejudice to make the chargeback, unless otherwise provided in*  
2 *a settlement agreement.*

3 (6) ~~Within one year~~ *six months* after either receipt of the written  
4 disapproval notice or completion of the franchisor's appeal process,  
5 whichever is later, a franchisee may file a protest with the board  
6 for determination of whether the franchisor complied with this  
7 subdivision. If a false claim was submitted by a franchisee with  
8 intent to defraud the franchisor, a longer period for audit and any  
9 resulting chargeback may be permitted if the franchisor obtains  
10 an order from the board. In any protest pursuant to this subdivision,  
11 the franchisor shall have the burden of proof.

12 SEC. 14. Section 3065.1 of the Vehicle Code is amended to  
13 read:

14 3065.1. (a) All claims made by a franchisee for payment under  
15 the terms of a franchisor incentive program shall be either approved  
16 or disapproved within 30 days after receipt by the franchisor. When  
17 any claim is disapproved, the franchisee who submits it shall be  
18 notified in writing of its disapproval within the required period,  
19 and each notice shall state the specific grounds upon which the  
20 disapproval is based. Any claim not specifically disapproved in  
21 writing within 30 days from receipt shall be deemed approved on  
22 the 30th day.

23 (b) Franchisee claims for incentive program compensation shall  
24 not be disapproved unless the claim is false or fraudulent, the claim  
25 is ineligible under the terms of the incentive program as previously  
26 communicated to the franchisee, or for material noncompliance  
27 with reasonable and nondiscriminatory documentation and  
28 administrative claims submission requirements. A franchisor shall  
29 not disapprove a claim based upon an extrapolation from a sample  
30 of claims.

31 (c) The franchisor shall provide for a reasonable appeal process  
32 allowing the franchisee at least 30 days after receipt of the written  
33 disapproval notice to respond to any disapproval with additional  
34 supporting documentation or information rebutting the disapproval.  
35 If disapproval is based ~~solely~~ upon noncompliance with  
36 documentation or administrative claims submission requirements,  
37 the franchisee shall have 30 days from the date of receipt of the  
38 written disapproval notice to cure the noncompliance. If the  
39 disapproval is rebutted, or any noncompliance is reasonably cured  
40 within that 30-day period, the franchisor shall approve the claim.

(d) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval or attempts to cure noncompliance relating to the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial, which shall contain the following statement on the first page, in at least 12-point boldface type and circumscribed by a line to segregate it from the rest of the text:

“NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF YOUR FRANCHISE INCENTIVE PROGRAM CLAIM, OR OTHERWISE APPEAL DENIAL OF YOUR CLAIM.

You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest this denial under the provisions of the California Vehicle Code. You must file your protest with the board within ~~one year~~ *six months* after receiving this notice.”

(e) Following the disapproval of a claim, a franchisee shall have ~~one year~~ *six months* from either receipt of the written notice described in subdivision (a) or (d), whichever is later, to file a protest with the board for determination of whether the franchisor complied with this subdivision. In any hearing pursuant to this subdivision, the franchisor shall have the burden of proof.

(f) All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(g) (1) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of ~~six~~ *nine* months after a claim is paid or credit issued.

(2) Previously approved claims shall not be disapproved and charged back unless the claim is false or fraudulent, the claim is ineligible under the terms of the incentive program as previously communicated to the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall

1 not disapprove a claim or chargeback a claim based upon an  
2 extrapolation from a sample of claims.

3 (3) If the franchisor disapproves of a previously approved claim  
4 following an audit, the franchisor shall provide to the franchisee,  
5 within 30 days after the audit, a written disapproval notice stating  
6 the specific grounds upon which the claim is disapproved. The  
7 franchisor shall provide a reasonable appeal process allowing the  
8 franchisee a reasonable period of not less than ~~45~~ 30 days after  
9 receipt of the written disapproval notice to respond to any  
10 chargeback with additional supporting documentation or  
11 information rebutting the disapproval, with the period to be  
12 commensurate with the volume of claims under consideration.

13 (4) If the franchisee provides additional supporting  
14 documentation or information purporting to rebut the disapproval,  
15 attempts to cure noncompliance relating to the claim, or otherwise  
16 appeals denial of the claim, and the franchisor continues to deny  
17 the claim, the franchisor shall provide the franchisee with a written  
18 notification of the final denial, which shall contain the following  
19 statement on the first page, in at least 12-point boldface type and  
20 circumscribed by a line to segregate it from the rest of the text:

21  
22 “NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT  
23 TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF  
24 YOUR FRANCHISOR INCENTIVE PROGRAM CLAIM, OR  
25 OTHERWISE APPEAL DENIAL OF YOUR CLAIM.

26  
27 “You have the right to file a protest with the NEW MOTOR  
28 VEHICLE BOARD in Sacramento and have a hearing in which  
29 you may protest this denial under the provisions of the California  
30 Vehicle Code. You must file your protest with the board within  
31 ~~one year~~ *six months* after receiving this notice.

32  
33 “WE WILL CHARGE YOU FOR THE DENIED CLAIMS  
34 WITHIN 45 TO 90 DAYS OF THIS NOTICE UNLESS YOU  
35 FILE A PROTEST WITH THE BOARD PRIOR TO  
36 CHARGEBACK.”

37  
38 (5) The franchisor shall not chargeback the franchisee until 45  
39 days after the franchisee receives the written notice described in  
40 paragraph (3) or (4), whichever is later. If the franchisee reasonably

1 cures any noncompliance relating to a claim, the franchisor shall  
2 not chargeback the dealer for that claim. Any chargeback to a  
3 franchisee for incentive program compensation shall be made  
4 within 90 days after the franchisee receives that written ~~notice~~.  
5 *notice. If the board sustains the chargeback or the protest is*  
6 *dismissed with prejudice, the franchisor shall have 90 days*  
7 *following issuance of the final order or the dismissal with prejudice*  
8 *to make the chargeback, unless otherwise provided in a settlement*  
9 *agreement.*

10 (6) ~~Within one year~~ *six months* after either receipt of the written  
11 notice described in paragraph (3) or paragraph (4), a franchisee  
12 may file a protest with the board for determination of whether the  
13 franchisor complied with this subdivision. If a false claim was  
14 submitted by a franchisee with the intent to defraud the franchisor,  
15 a longer period for audit and any resulting chargeback may be  
16 permitted if the franchisor obtains an order from the board. If the  
17 franchisee files a protest pursuant to this subdivision prior to the  
18 franchisor's chargeback for denied claims, the franchisor shall not  
19 offset or otherwise undertake to collect the chargeback until the  
20 board issues a final order on the protest. In any protest pursuant  
21 to this subdivision, the franchisor shall have the burden of proof.

22 SEC. 15. Section 3066 of the Vehicle Code is amended to read:

23 3066. (a) Upon receiving a protest pursuant to Section 3060,  
24 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, the  
25 board shall fix a time within 60 days of the order, and place of  
26 hearing, and shall send by registered mail a copy of the order to  
27 the franchisor, the protesting franchisee, and all individuals and  
28 groups that have requested notification by the board of protests  
29 and decisions of the board. Except in a case involving a franchisee  
30 who deals exclusively in motorcycles, the board or its executive  
31 director may, upon a showing of good cause, accelerate or postpone  
32 the date initially established for a hearing, but the hearing may not  
33 be rescheduled more than 90 days after the board's initial order.  
34 For the purpose of accelerating or postponing a hearing date, "good  
35 cause" includes, but is not limited to, the effects upon, and any  
36 irreparable harm to, the parties or interested persons or groups if  
37 the request for a change in hearing date is not granted. The board  
38 or an administrative law judge designated by the board shall hear  
39 and consider the oral and documented evidence introduced by the  
40 parties and other interested individuals and groups, and the board

1 shall make its decision solely on the record so made. Chapter 4.5  
2 (commencing with Section 11400) of Part 1 of Division 3 of Title  
3 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7,  
4 11511, 11511.5, 11513, 11514, 11515, and 11517 of the  
5 Government Code apply to these proceedings.

6 (b) In a hearing on a protest filed pursuant to Section 3060,  
7 3062, 3070, or 3072, the franchisor shall have the burden of proof  
8 to establish that there is good cause to modify, replace, terminate,  
9 or refuse to continue a franchise. The franchisee shall have the  
10 burden of proof to establish that there is good cause not to enter  
11 into a franchise establishing or relocating an additional motor  
12 vehicle dealership.

13 (c) In a hearing on a protest alleging a violation of, or filed  
14 pursuant to, Section 3064, 3065, 3065.1, 3074, 3075, or 3076, the  
15 franchisee shall have the burden of proof, but the franchisor has  
16 the burden of proof to establish that a franchisee acted with intent  
17 to defraud the franchisor where that issue is material to a protest  
18 filed pursuant to Section 3065, 3065.1, 3075, or 3076.

19 (d) A member of the board who is a new motor vehicle dealer  
20 may not participate in, hear, comment, or advise other members  
21 upon, or decide, a matter involving a protest filed pursuant to this  
22 article unless all parties to the protest stipulate otherwise.

23 SEC. 16. Section 3067 of the Vehicle Code is amended to read:

24 3067. (a) The decision of the board shall be in writing and  
25 shall contain findings of fact and a determination of the issues  
26 presented. The decision shall sustain, conditionally sustain,  
27 overrule, or conditionally overrule the protest. Conditions imposed  
28 by the board shall be for the purpose of assuring performance of  
29 binding contractual agreements between franchisees and franchisors  
30 or otherwise serving the purposes of this article or Article 5  
31 (commencing with Section 3070). If the board fails to act within  
32 30 days after the hearing, within 30 days after the board receives  
33 a proposed decision where the case is heard before an  
34 administrative law judge alone, or within a period necessitated by  
35 Section 11517 of the Government Code, or as may be mutually  
36 agreed upon by the parties, then the proposed action shall be  
37 deemed to be approved. Copies of the board's decision shall be  
38 delivered to the parties personally or sent to them by registered  
39 mail, as well as to all individuals and groups that have requested  
40 notification by the board of protests and decisions by the board.

1 The board's decision shall be final upon its delivery or mailing  
2 and a reconsideration or rehearing is not permitted.

3 (b) Notwithstanding subdivision (c) of Section 11517 of the  
4 Government Code, if a protest is heard by an administrative law  
5 judge alone, 10 days after receipt by the board of the administrative  
6 law judge's proposed decision, a copy of the proposed decision  
7 shall be filed by the board as a public record and a copy shall be  
8 served by the board on each party and his or her attorney.

9 SEC. 17. Section 3069.1 of the Vehicle Code is amended to  
10 read:

11 3069.1. Sections 3060 to 3065.1, inclusive, do not apply to a  
12 franchise authorizing a dealership, as defined in subdivision (d)  
13 of Section 3072.

14 SEC. 18. Section 11713.3 of the Vehicle Code is amended to  
15 read:

16 11713.3. It is unlawful and a violation of this code for a  
17 manufacturer, manufacturer branch, distributor, or distributor  
18 branch licensed pursuant to this code to do, directly or indirectly  
19 through an affiliate, any of the following:

20 (a) To refuse or fail to deliver in reasonable quantities and within  
21 a reasonable time after receipt of an order from a dealer having a  
22 franchise for the retail sale of a new vehicle sold or distributed by  
23 the manufacturer or distributor, a new vehicle or parts or  
24 accessories to new vehicles as are covered by the franchise, if the  
25 vehicle, parts, or accessories are publicly advertised as being  
26 available for delivery or actually being delivered. This subdivision  
27 is not violated, however, if the failure is caused by acts or causes  
28 beyond the control of the manufacturer, manufacturer branch,  
29 distributor, or distributor branch.

30 (b) To prevent or require, or attempt to prevent or require, by  
31 contract or otherwise, a change in the capital structure of a  
32 dealership or the means by or through which the dealer finances  
33 the operation of the dealership, if the dealer at all times meets  
34 reasonable capital standards agreed to by the dealer and the  
35 manufacturer or distributor, and if a change in capital structure  
36 does not cause a change in the principal management or have the  
37 effect of a sale of the franchise without the consent of the  
38 manufacturer or distributor.

39 (c) To prevent or require, or attempt to prevent or require, a  
40 dealer to change the executive management of a dealership, other

1 than the principal dealership operator or operators, if the franchise  
2 was granted to the dealer in reliance upon the personal  
3 qualifications of that person.

4 (d) (1) Except as provided in subdivision (t), to prevent or  
5 require, or attempt to prevent or require, by contract or otherwise,  
6 a dealer, or an officer, partner, or stockholder of a dealership, the  
7 sale or transfer of a part of the interest of any of them to another  
8 person. A dealer, officer, partner, or stockholder shall not, however,  
9 have the right to sell, transfer, or assign the franchise, or a right  
10 thereunder, without the consent of the manufacturer or distributor  
11 except that the consent shall not be unreasonably withheld.

12 (2) (A) For the transferring franchisee to fail, prior to the sale,  
13 transfer, or assignment of a franchisee or the sale, assignment, or  
14 transfer of all, or substantially all, of the assets of the franchised  
15 business or a controlling interest in the franchised business to  
16 another person, to notify the manufacturer or distributor of the  
17 franchisee's decision to sell, transfer, or assign the franchise. The  
18 notice shall be in writing and shall include all of the following:

19 (i) The proposed transferee's name and address.

20 (ii) A copy of all of the agreements relating to the sale,  
21 assignment, or transfer of the franchised business or its assets.

22 (iii) The proposed transferee's application for approval to  
23 become the successor franchisee. The application shall include  
24 forms and related information generally utilized by the  
25 manufacturer or distributor in reviewing prospective franchisees,  
26 if those forms are readily made available to existing franchisees.  
27 As soon as practicable after receipt of the proposed transferee's  
28 application, the manufacturer or distributor shall notify the  
29 franchisee and the proposed transferee of information needed to  
30 make the application complete.

31 (B) For the manufacturer or distributor, to fail, on or before 60  
32 days after the receipt of all of the information required pursuant  
33 to subparagraph (A), or as extended by a written agreement  
34 between the manufacturer or distributor and the franchisee, to  
35 notify the franchisee of the approval or the disapproval of the sale,  
36 transfer, or assignment of the franchise. The notice shall be in  
37 writing and shall be personally served or sent by certified mail,  
38 return receipt requested, or by guaranteed overnight delivery  
39 service that provides verification of delivery and shall be directed  
40 to the franchisee. A proposed sale, assignment, or transfer shall

1 be deemed approved, unless disapproved by the franchisor in the  
2 manner provided by this subdivision. If the proposed sale,  
3 assignment, or transfer is disapproved, the franchisor shall include  
4 in the notice of disapproval a statement setting forth the reasons  
5 for the disapproval.

6 (3) In an action in which the manufacturer's or distributor's  
7 withholding of consent under this subdivision or subdivision (e)  
8 is an issue, whether the withholding of consent was unreasonable  
9 is a question of fact requiring consideration of all the existing  
10 circumstances.

11 (e) To prevent, or attempt to prevent, a dealer from receiving  
12 fair and reasonable compensation for the value of the franchised  
13 business. There shall not be a transfer or assignment of the dealer's  
14 franchise without the consent of the manufacturer or distributor,  
15 which consent shall not be unreasonably withheld or conditioned  
16 upon the release, assignment, novation, waiver, estoppel, or  
17 modification of a claim or defense by the dealer.

18 (f) To obtain money, goods, services, or another benefit from  
19 a person with whom the dealer does business, on account of, or in  
20 relation to, the transaction between the dealer and that other person,  
21 other than for compensation for services rendered, unless the  
22 benefit is promptly accounted for, and transmitted to, the dealer.

23 (g) (1) Except as provided in paragraph (3), to obtain from a  
24 dealer or enforce against a dealer an agreement, provision, release,  
25 assignment, novation, waiver, or estoppel that does any of the  
26 following:

27 (A) Modifies or disclaims a duty or obligation of a manufacturer,  
28 manufacturer branch, distributor, distributor branch, or  
29 representative, or a right or privilege of a dealer, pursuant to  
30 Chapter 4 (commencing with Section 11700) of Division 5 or  
31 Chapter 6 (commencing with Section 3000) of Division 2.

32 (B) Limits or constrains the right of a dealer to file, pursue, or  
33 submit evidence in connection with a protest before the board.

34 (C) Requires a dealer to terminate a franchise.

35 (D) Requires a controversy between a manufacturer,  
36 manufacturer branch, distributor, distributor branch, or  
37 representative and a dealer to be referred to a person for a binding  
38 determination. However, this subparagraph does not prohibit  
39 arbitration before an independent arbitrator, provided that whenever  
40 a motor vehicle franchise contract provides for the use of arbitration



1 to resolve a controversy arising out of, or relating to, that contract,  
2 arbitration may be used to settle the controversy only if, after the  
3 controversy arises, all parties to the controversy consent in writing  
4 to use arbitration to settle the controversy. For the purpose of this  
5 subparagraph, the terms “motor vehicle” and “motor vehicle  
6 franchise contract” shall have the same meaning as defined in  
7 Section 1226 of Title 15 of the United States Code. If arbitration  
8 is elected to settle a dispute under a motor vehicle franchise  
9 contract, the arbitrator shall provide the parties to the arbitration  
10 with a written explanation of the factual and legal basis for the  
11 award.

12 (2) An agreement, provision, release, assignment, novation,  
13 waiver, or estoppel prohibited by this subdivision shall be  
14 unenforceable and void.

15 (3) This subdivision does not do any of the following:

16 (A) Limit or restrict the terms upon which parties to a protest  
17 before the board, civil action, or other proceeding can settle or  
18 resolve, or stipulate to evidentiary or procedural matters during  
19 the course of, a protest, civil action, or other proceeding.

20 (B) Affect the enforceability of any stipulated order or other  
21 order entered by the board.

22 (C) Affect the enforceability of any provision in a contract if  
23 the provision is not prohibited under this subdivision or any other  
24 law.

25 (D) Affect the enforceability of a provision in any contract  
26 entered into on or before December 31, 2011.

27 (E) Prohibit a dealer from waiving its right to file a protest  
28 pursuant to Section 3065.1 if the waiver agreement is entered into  
29 after a franchisor incentive program claim has been disapproved  
30 by the franchisor and the waiver is voluntarily given as part of an  
31 agreement to settle that claim.

32 (F) Prohibit a voluntary agreement supported by valuable  
33 consideration, other than granting or renewing a franchise, that  
34 does both of the following:

35 (i) Provides that a dealer establish or maintain exclusive  
36 facilities, personnel, or display space or provides that a dealer  
37 make a material alteration, expansion, or addition to a dealership  
38 facility.

39 (ii) Contains no waiver or other provision prohibited by  
40 subparagraph (A), (B), (C), or (D) of paragraph (1).

1 (G) Prohibit an agreement separate from the franchise agreement  
2 that implements a dealer's election to terminate the franchise if  
3 the agreement is conditioned only on a specified time for  
4 termination or payment of consideration to the dealer.

5 (H) (i) Prohibit a voluntary waiver agreement, supported by  
6 valuable consideration, other than the consideration of renewing  
7 a franchise, to waive the right of a dealer to file a protest under  
8 Section 3062 for the proposed establishment or relocation of a  
9 specific proposed dealership, if the waiver agreement provides all  
10 of the following:

11 (I) The approximate address at which the proposed dealership  
12 will be located.

13 (II) The planning potential used to establish the proposed  
14 dealership's facility, personnel, and capital requirements.

15 (III) An approximation of projected vehicle and parts sales, and  
16 number of vehicles to be serviced at the proposed dealership.

17 (IV) Whether the franchisor or affiliate will hold an ownership  
18 interest in the proposed dealership or real property of the proposed  
19 dealership, and the approximate percentage of any franchisor or  
20 affiliate ownership interest in the proposed dealership.

21 (V) The line-makes to be operated at the proposed dealership.

22 (VI) If known at the time the waiver agreement is executed, the  
23 identity of the dealer who will operate the proposed dealership.

24 (VII) The date the waiver agreement is to expire, which may  
25 not be more than 30 months after the date of execution of the  
26 waiver agreement.

27 (ii) Notwithstanding the provisions of a waiver agreement  
28 entered into pursuant to the provisions of this subparagraph, a  
29 dealer may file a protest under Section 3062 if any of the  
30 information provided pursuant to clause (i) has become materially  
31 inaccurate since the waiver agreement was executed. Any  
32 determination of the enforceability of a waiver agreement shall be  
33 determined by the board and the franchisor shall have the burden  
34 of proof.

35 (h) To increase prices of motor vehicles that the dealer had  
36 ordered for private retail consumers prior to the dealer's receipt  
37 of the written official price increase notification. A sales contract  
38 signed by a private retail consumer is evidence of the order. In the  
39 event of manufacturer price reductions, the amount of the reduction  
40 received by a dealer shall be passed on to the private retail

1 consumer by the dealer if the retail price was negotiated on the  
2 basis of the previous higher price to the dealer. Price reductions  
3 apply to all vehicles in the dealer's inventory that were subject to  
4 the price reduction. Price differences applicable to new model or  
5 series motor vehicles at the time of the introduction of new models  
6 or series shall not be considered a price increase or price decrease.  
7 This subdivision does not apply to price changes caused by either  
8 of the following:

9 (1) The addition to a motor vehicle of required or optional  
10 equipment pursuant to state or federal law.

11 (2) Revaluation of the United States dollar in the case of a  
12 foreign-make vehicle.

13 (i) To fail to pay to a dealer, within a reasonable time following  
14 receipt of a valid claim by a dealer thereof, a payment agreed to  
15 be made by the manufacturer or distributor to the dealer by reason  
16 of the fact that a new vehicle of a prior year model is in the dealer's  
17 inventory at the time of introduction of new model vehicles.

18 (j) To deny the widow, widower, or heirs designated by a  
19 deceased owner of a dealership the opportunity to participate in  
20 the ownership of the dealership or successor dealership under a  
21 valid franchise for a reasonable time after the death of the owner.

22 (k) To offer refunds or other types of inducements to a person  
23 for the purchase of new motor vehicles of a certain line-make to  
24 be sold to the state or a political subdivision of the state without  
25 making the same offer to all other dealers in the same line-make  
26 within the relevant market area.

27 (l) To modify, replace, enter into, relocate, terminate, or refuse  
28 to renew a franchise in violation of Article 4 (commencing with  
29 Section 3060) of Chapter 6 of Division 2.

30 (m) To employ a person as a representative who has not been  
31 licensed pursuant to Article 3 (commencing with Section 11900)  
32 of Chapter 4 of Division 5.

33 (n) To deny a dealer the right of free association with another  
34 dealer for a lawful purpose.

35 (o) (1) To compete with a dealer in the same line-make  
36 operating under an agreement or franchise from a manufacturer  
37 or distributor in the relevant market area.

38 (2) A manufacturer, branch, or distributor or an entity that  
39 controls or is controlled by, a manufacturer, branch, or distributor,

1 shall not, however, be deemed to be competing in the following  
2 limited circumstances:

3 (A) Owning or operating a dealership for a temporary period,  
4 not to exceed one year at the location of a former dealership of the  
5 same line-make that has been out of operation for less than six  
6 months. However, after a showing of good cause by a  
7 manufacturer, branch, or distributor that it needs additional time  
8 to operate a dealership in preparation for sale to a successor  
9 independent franchisee, the board may extend the time period.

10 (B) Owning an interest in a dealer as part of a bona fide dealer  
11 development program that satisfies all of the following  
12 requirements:

13 (i) The sole purpose of the program is to make franchises  
14 available to persons lacking capital, training, business experience,  
15 or other qualities ordinarily required of prospective franchisees  
16 and the dealer development candidate is an individual who is  
17 unable to acquire the franchise without assistance of the program.

18 (ii) The dealer development candidate has made a significant  
19 investment subject to loss in the franchised business of the dealer.

20 (iii) The program requires the dealer development candidate to  
21 manage the day-to-day operations and business affairs of the dealer  
22 and to acquire, within a reasonable time and on reasonable terms  
23 and conditions, beneficial ownership and control of a majority  
24 interest in the dealer and disassociation of any direct or indirect  
25 ownership or control by the manufacturer, branch, or distributor.

26 (C) Owning a wholly owned subsidiary corporation of a  
27 distributor that sells motor vehicles at retail, if, for at least three  
28 years prior to January 1, 1973, the subsidiary corporation has been  
29 a wholly owned subsidiary of the distributor and engaged in the  
30 sale of vehicles at retail.

31 (3) (A) A manufacturer, branch, and distributor that owns or  
32 operates a dealership in the manner described in subparagraph (A)  
33 of paragraph (2) shall give written notice to the board, within 10  
34 days, each time it commences or terminates operation of a  
35 dealership and each time it acquires, changes, or divests itself of  
36 an ownership interest.

37 (B) A manufacturer, branch, and distributor that owns an interest  
38 in a dealer in the manner described in subparagraph (B) of  
39 paragraph (2) shall give written notice to the board, annually, of  
40 the name and location of each dealer in which it has an ownership

1 interest, the name of the bona fide dealer development owner or  
2 owners, and the ownership interests of each owner expressed as a  
3 percentage.

4 (p) To unfairly discriminate among its franchisees with respect  
5 to warranty reimbursement or authority granted to its franchisees  
6 to make warranty adjustments with retail customers.

7 (q) To sell vehicles to a person not licensed pursuant to this  
8 chapter for resale.

9 (r) To fail to affix an identification number to a park trailer, as  
10 described in Section 18009.3 of the Health and Safety Code, that  
11 is manufactured on or after January 1, 1987, and that does not  
12 clearly identify the unit as a park trailer to the department. The  
13 configuration of the identification number shall be approved by  
14 the department.

15 (s) To dishonor a warranty, rebate, or other incentive offered  
16 to the public or a dealer in connection with the retail sale of a new  
17 motor vehicle, based solely upon the fact that an autobroker  
18 arranged or negotiated the sale. This subdivision shall not prohibit  
19 the disallowance of that rebate or incentive if the purchaser or  
20 dealer is ineligible to receive the rebate or incentive pursuant to  
21 any other term or condition of a rebate or incentive program.

22 (t) To exercise a right of first refusal or other right requiring a  
23 franchisee or an owner of the franchise to sell, transfer, or assign  
24 to the franchisor, or to a nominee of the franchisor, all or a material  
25 part of the franchised business or of the assets of the franchised  
26 business unless all of the following requirements are met:

27 (1) The franchise authorizes the franchisor to exercise a right  
28 of first refusal to acquire the franchised business or assets of the  
29 franchised business in the event of a proposed sale, transfer, or  
30 assignment.

31 (2) The franchisor gives written notice of its exercise of the  
32 right of first refusal no later than 45 days after the franchisor  
33 receives all of the information required pursuant to subparagraph  
34 (A) of paragraph (2) of subdivision (d).

35 (3) The sale, transfer, or assignment being proposed relates to  
36 not less than all or substantially all of the assets of the franchised  
37 business or to a controlling interest in the franchised business.

38 (4) The proposed transferee is neither a family member of an  
39 owner of the franchised business, nor a managerial employee of  
40 the franchisee owning 15 percent or more of the franchised

1 business, nor a corporation, partnership, or other legal entity owned  
2 by the existing owners of the franchised business. For purposes of  
3 this paragraph, a “family member” means the spouse of an owner  
4 of the franchised business, the child, grandchild, brother, sister,  
5 or parent of an owner, or a spouse of one of those family members.  
6 This paragraph does not limit the rights of the franchisor to  
7 disapprove a proposed transferee as provided in subdivision (d).

8 (5) Upon the franchisor’s exercise of the right of first refusal,  
9 the consideration paid by the franchisor to the franchisee and  
10 owners of the franchised business shall equal or exceed all  
11 consideration that each of them were to have received under the  
12 terms of, or in connection with, the proposed sale, assignment, or  
13 transfer, and the franchisor shall comply with all the terms and  
14 conditions of the agreement or agreements to sell, transfer, or  
15 assign the franchised business.

16 (6) The franchisor shall reimburse the proposed transferee for  
17 expenses paid or incurred by the proposed transferee in evaluating,  
18 investigating, and negotiating the proposed transfer to the extent  
19 those expenses do not exceed the usual, customary, and reasonable  
20 fees charged for similar work done in the area in which the  
21 franchised business is located. These expenses include, but are not  
22 limited to, legal and accounting expenses, and expenses incurred  
23 for title reports and environmental or other investigations of real  
24 property on which the franchisee’s operations are conducted. The  
25 proposed transferee shall provide the franchisor a written  
26 itemization of those expenses, and a copy of all nonprivileged  
27 reports and studies for which expenses were incurred, if any, within  
28 30 days of the proposed transferee’s receipt of a written request  
29 from the franchisor for that accounting. The franchisor shall make  
30 payment within 30 days of exercising the right of first refusal.

31 (u) (1) To unfairly discriminate in favor of a dealership owned  
32 or controlled, in whole or in part, by a manufacturer or distributor  
33 or an entity that controls or is controlled by the manufacturer or  
34 distributor. Unfair discrimination includes, but is not limited to,  
35 the following:

36 (A) The furnishing to a franchisee or dealer that is owned or  
37 controlled, in whole or in part, by a manufacturer, branch, or  
38 distributor of any of the following:

39 (i) A vehicle that is not made available to each franchisee  
40 pursuant to a reasonable allocation formula that is applied

1 uniformly, and a part or accessory that is not made available to all  
2 franchisees on an equal basis when there is no reasonable allocation  
3 formula that is applied uniformly.

4 (ii) A vehicle, part, or accessory that is not made available to  
5 each franchisee on comparable delivery terms, including the time  
6 of delivery after the placement of an order. Differences in delivery  
7 terms due to geographic distances or other factors beyond the  
8 control of the manufacturer, branch, or distributor shall not  
9 constitute unfair competition.

10 (iii) Information obtained from a franchisee by the manufacturer,  
11 branch, or distributor concerning the business affairs or operations  
12 of a franchisee in which the manufacturer, branch, or distributor  
13 does not have an ownership interest. The information includes,  
14 but is not limited to, information contained in financial statements  
15 and operating reports, the name, address, or other personal  
16 information or buying, leasing, or service behavior of a dealer  
17 customer, and other information that, if provided to a franchisee  
18 or dealer owned or controlled by a manufacturer or distributor,  
19 would give that franchisee or dealer a competitive advantage. This  
20 clause does not apply if the information is provided pursuant to a  
21 subpoena or court order, or to aggregated information made  
22 available to all franchisees.

23 (iv) Sales or service incentives, discounts, or promotional  
24 programs that are not made available to all California franchises  
25 of the same line-make on an equal basis.

26 (B) Referring a prospective purchaser or lessee to a dealer in  
27 which a manufacturer, branch, or distributor has an ownership  
28 interest, unless the prospective purchaser or lessee resides in the  
29 area of responsibility assigned to that dealer or the prospective  
30 purchaser or lessee requests to be referred to that dealer.

31 (2) This subdivision does not prohibit a franchisor from granting  
32 a franchise to prospective franchisees or assisting those franchisees  
33 during the course of the franchise relationship as part of a program  
34 or programs to make franchises available to persons lacking capital,  
35 training, business experience, or other qualifications ordinarily  
36 required of prospective franchisees.

37 (v) (1) To access, modify, or extract information from a  
38 confidential dealer computer record, as defined in Section  
39 11713.25, without obtaining the prior written consent of the dealer  
40 and without maintaining administrative, technical, and physical

1 safeguards to protect the security, confidentiality, and integrity of  
2 the information.

3 (2) Paragraph (1) does not limit a duty that a dealer may have  
4 to safeguard the security and privacy of records maintained by the  
5 dealer.

6 (w) (1) To use electronic, contractual, or other means to prevent  
7 or interfere with any of the following:

8 (A) The lawful efforts of a dealer to comply with federal and  
9 state data security and privacy laws.

10 (B) The ability of a dealer to do either of the following:

11 (i) Ensure that specific data accessed from the dealer's computer  
12 system is within the scope of consent specified in subdivision (v).

13 (ii) Monitor specific data accessed from or written to the dealer's  
14 computer system.

15 (2) Paragraph (1) does not limit a duty that a dealer may have  
16 to safeguard the security and privacy of records maintained by the  
17 dealer.

18 (x) (1) To unfairly discriminate against a franchisee selling a  
19 service contract, debt cancellation agreement, maintenance  
20 agreement, or similar product not approved, endorsed, sponsored,  
21 or offered by the manufacturer, manufacturer branch, distributor,  
22 or distributor branch or affiliate. For purposes of this subdivision,  
23 unfair discrimination includes, but is not limited to, any of the  
24 following:

25 (A) Express or implied statements that the dealer is under an  
26 obligation to exclusively sell or offer to sell service contracts, debt  
27 cancellation agreements, or similar products approved, endorsed,  
28 sponsored, or offered by the manufacturer, manufacturer branch,  
29 distributor, or distributor branch or affiliate.

30 (B) Express or implied statements that selling or offering to sell  
31 service contracts, debt cancellation agreements, maintenance  
32 agreements, or similar products not approved, endorsed, sponsored,  
33 or offered by the manufacturer, manufacturer branch, distributor,  
34 or distributor branch or affiliate, or the failure to sell or offer to  
35 sell service contracts, debt cancellation agreements, maintenance  
36 agreements, or similar products approved, endorsed, sponsored,  
37 or offered by the manufacturer, manufacturer branch, distributor,  
38 or distributor branch or affiliate will have any negative  
39 consequences for the dealer.



1 (C) Measuring a dealer's performance under a franchise  
2 agreement based upon the sale of service contracts, debt  
3 cancellation agreements, or similar products approved, endorsed,  
4 sponsored, or offered by the manufacturer, manufacturer branch,  
5 distributor, or distributor branch or affiliate.

6 (D) Requiring a dealer to actively promote the sale of service  
7 contracts, debt cancellation agreements, or similar products  
8 approved, endorsed, sponsored, or offered by the manufacturer,  
9 manufacturer branch, distributor, or distributor branch or affiliate.

10 (E) Conditioning access to vehicles or parts, or vehicle sales or  
11 service incentives upon the sale of service contracts, debt  
12 cancellation agreements, or similar products approved, endorsed,  
13 sponsored, or offered by the manufacturer, manufacturer branch,  
14 distributor, or distributor branch or affiliate.

15 (2) Unfair discrimination does not include, and nothing shall  
16 prohibit a manufacturer from, offering an incentive program to  
17 vehicle dealers who voluntarily sell or offer to sell service  
18 contracts, debt cancellation agreements, or similar products  
19 approved, endorsed, sponsored, or offered by the manufacturer,  
20 manufacturer branch, distributor, or distributor branch or affiliate,  
21 if the program does not provide vehicle sales or service incentives.

22 (3) This subdivision does not prohibit a manufacturer,  
23 manufacturer branch, distributor, or distributor branch from  
24 requiring a franchisee that sells a used vehicle as "certified" under  
25 a certified used vehicle program established by the manufacturer,  
26 manufacturer branch, distributor, or distributor branch to provide  
27 a service contract approved, endorsed, sponsored, or offered by  
28 the manufacturer, manufacturer branch, distributor, or distributor  
29 branch.

30 (4) Unfair discrimination does not include, and nothing shall  
31 prohibit a franchisor from requiring a franchisee to provide, the  
32 following notice prior to the sale of the service contract if the  
33 service contract is not provided or backed by the franchisor and  
34 the vehicle is of the franchised line-make:

35  
36 "Service Contract Disclosure

37 The service contract you are purchasing is not provided or backed  
38 by the manufacturer of the vehicle you are purchasing. The  
39 manufacturer of the vehicle is not responsible for claims or repairs  
40 under this service contract.

1 \_\_\_\_\_  
2 Signature of Purchaser”

3 (y) To take or threaten to take any adverse action against a dealer  
4 *pursuant to a published export or sale-for-resale prohibition*  
5 because the dealer sold or leased a vehicle to a customer who either  
6 exported the vehicle to a foreign country or resold the vehicle *in*  
7 *violation of the prohibition*, unless the ~~adverse action is permitted~~  
8 ~~by contractual terms binding on the dealer and the dealer had actual~~  
9 ~~knowledge~~ *dealer knew or reasonably should have known* of the  
10 customer’s intent to export or resell the vehicle *in violation of the*  
11 *prohibition at the time of sale or lease*. If the dealer causes the  
12 vehicle to be registered in this or any other state, and collects or  
13 causes to be collected any applicable sales or use tax due to this  
14 state, a rebuttable presumption is established that the dealer did  
15 not have ~~actual knowledge~~ *reason to know* of the customer’s intent  
16 to export or resell the vehicle.

17 (z) As used in this section, “area of responsibility” is a  
18 geographic area specified in a franchise that is used by the  
19 franchisor for the purpose of evaluating the franchisee’s  
20 performance of its sales and service obligations.

21 SEC. 19. Section 11713.13 of the Vehicle Code is amended to  
22 read:

23 11713.13. It is unlawful and a violation of this code for any  
24 manufacturer, manufacturer branch, distributor, or distributor  
25 branch licensed under this code to do, directly or indirectly through  
26 an affiliate, any of the following:

27 (a) Prevent, or attempt to prevent, by contract or otherwise, a  
28 dealer from acquiring, adding, or maintaining a sales or service  
29 operation for another line-make of motor vehicles at the same or  
30 expanded facility at which the dealer currently operates a dealership  
31 if the dealer complies with any reasonable facilities and capital  
32 requirements of the manufacturer or distributor.

33 (b) Require a dealer to establish or maintain exclusive facilities,  
34 personnel, or display space if the imposition of the requirement  
35 would be unreasonable in light of all existing circumstances,  
36 including economic conditions. In any proceeding under this  
37 subdivision or subdivision (a) in which the reasonableness of a  
38 facility or capital requirement is an issue, the manufacturer or  
39 distributor shall have the burden of proof.

(c) Require, by contract or otherwise, a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions. ~~A~~

*(1) A required facility alteration, expansion, or addition shall not be deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor when substantially similar goods or services are available from another vendor. ~~In~~ This paragraph does not authorize a dealer to impair or eliminate the intellectual property rights of the manufacturer, manufacturer branch, distributor, or distributor branch, or to permit a dealer to erect or maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer, manufacturer branch, distributor, or distributor branch. This paragraph shall not apply to a specific good or service if the manufacturer, manufacturer branch, distributor, or distributor branch provides the dealer with a lump-sum payment of a substantial portion of the cost of that good or service.*

*(2) In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate shall have the burden of proof.*

(d) (1) Fail to pay to a dealer, within 90 days of termination, cancellation, or nonrenewal of a franchise, all of the following:

(A) The dealer cost, plus any charges made by the manufacturer or distributor for vehicle distribution or delivery and the cost of any dealer-installed original equipment accessories, less any amount invoiced to the vehicle and paid by the manufacturer or distributor to the dealer, for all new and undamaged vehicles with less than 500 miles in the dealer's inventory that were acquired by the dealer from the manufacturer, distributor, or another new motor vehicle dealer franchised to sell vehicles of the same line-make, in the ordinary course of business, within 18 months of termination, cancellation, or nonrenewal of the franchise.

(B) The dealer cost for all unused and undamaged supplies, parts, and accessories listed in the manufacturer's current parts catalog and in their original packaging, except that sheet metal may be packaged in a comparable substitute for the original package.

1 (C) The fair market value of each undamaged sign owned by  
2 the motor vehicle dealer and bearing a common name, trade name,  
3 or trademark of the manufacturer or distributor if acquisition of  
4 the sign was required or made a condition of participation in an  
5 incentive program by the manufacturer or distributor.

6 (D) The fair market value of all special tools, computer systems,  
7 and equipment that were required or made a condition of  
8 participation in an incentive program by the manufacturer or  
9 distributor that are in usable condition, excluding normal wear and  
10 tear.

11 (E) The dealer costs of handling, packing, loading, and  
12 transporting any items or inventory for repurchase by the  
13 manufacturer or distributor.

14 (2) This subdivision does not apply to a franchisor of a dealer  
15 of new recreational vehicles, as defined in subdivision (a) of  
16 Section 18010 of the Health and Safety Code.

17 (3) This subdivision does not apply to a termination that is  
18 implemented as a result of the sale of substantially all of the  
19 inventory and fixed assets or stock of a franchised dealership if  
20 the dealership continues to operate as a franchisee of the same  
21 line-make.

22 (e) (1) (A) Fail to pay to a dealer of new recreational vehicles,  
23 as defined in subdivision (a) of Section 18010 of the Health and  
24 Safety Code, within 90 days of termination, cancellation, or  
25 nonrenewal of a franchise for a recreational vehicle line-make, as  
26 defined in Section 3072.5, the dealer cost, plus any charges made  
27 by the manufacturer or distributor for vehicle distribution or  
28 delivery and the cost of any dealer-installed original equipment  
29 accessories, less any amount invoiced to the vehicle and paid by  
30 the manufacturer or distributor to the dealer, for a new recreational  
31 vehicle when the termination, cancellation, or nonrenewal is  
32 initiated by a recreational vehicle manufacturer. This paragraph  
33 only applies to new and unused recreational vehicles that do not  
34 currently have or have had in the past, material damage, as defined  
35 in Section 9990, and that the dealer acquired from the  
36 manufacturer, distributor, or another new motor vehicle dealer  
37 franchised to sell recreational vehicles of the same line-make in  
38 the ordinary course of business within 12 months of the  
39 termination, cancellation, or nonrenewal of the franchise.

1 (B) For those recreational vehicles with odometers, paragraph  
2 (1) shall apply to only those vehicles that have no more than 1,500  
3 miles on the odometer, in addition to the number of miles incurred  
4 while delivering the vehicle from the manufacturer's facility that  
5 produced the vehicle for delivery to the dealer's retail location.

6 (C) Damaged recreational vehicles shall be repurchased by the  
7 manufacturer provided there is an offset in value for damages,  
8 except recreational vehicles that have or had material damage, as  
9 defined in Section 9990, may be repurchased at the manufacturer's  
10 option provided there is an offset in value for damages.

11 (2) Fail to pay to a dealer of new recreational vehicles, as  
12 defined in subdivision (a) of Section 18010 of the Health and  
13 Safety Code, within 90 days of termination, cancellation, or  
14 nonrenewal of a franchise, all of the following:

15 (A) The dealer cost for all unused and undamaged supplies,  
16 parts, and accessories listed in the manufacturer's current parts  
17 catalog and in their original packaging, except that sheet metal  
18 may be packaged in a comparable substitute for the original  
19 package.

20 (B) The fair market value of each undamaged sign owned by  
21 the motor vehicle dealer and bearing a common name, trade name,  
22 or trademark of the manufacturer or distributor if acquisition of  
23 the sign was required or made a condition of participation in an  
24 incentive program by the manufacturer or distributor.

25 (C) The fair market value of all special tools, computer systems,  
26 and equipment that were required or made a condition of  
27 participation in an incentive program by the manufacturer or  
28 distributor that are in usable condition, excluding normal wear and  
29 tear.

30 (D) The dealer costs of handling, packing, loading, and  
31 transporting any items or inventory for repurchase by the  
32 manufacturer or distributor.

33 (f) (1) Fail, upon demand, to indemnify any existing or former  
34 franchisee and the franchisee's successors and assigns from any  
35 and all damages sustained and attorney's fees and other expenses  
36 reasonably incurred by the franchisee that result from or relate to  
37 any claim made or asserted by a third party against the franchisee  
38 to the extent the claim results from any of the following:

39 (A) The condition, characteristics, manufacture, assembly, or  
40 design of any vehicle, parts, accessories, tools, or equipment, or

1 the selection or combination of parts or components manufactured  
2 or distributed by the manufacturer or distributor.

3 (B) Service systems, procedures, or methods the franchisor  
4 required or recommended the franchisee to use if the franchisee  
5 properly uses the system, procedure, or method.

6 (C) Improper use or disclosure by a manufacturer or distributor  
7 of nonpublic personal information obtained from a franchisee  
8 concerning any consumer, customer, or employee of the franchisee.

9 (D) Any act or omission of the manufacturer or distributor for  
10 which the franchisee would have a claim for contribution or  
11 indemnity under applicable law or under the franchise, irrespective  
12 of and without regard to any prior termination or expiration of the  
13 franchise.

14 (2) This subdivision does not limit, in any way, the existing  
15 rights, remedies, or recourses available to any person who  
16 purchases or leases vehicles at retail.

17 (g) (1) Establish or maintain a performance standard, sales  
18 objective, or program for measuring a dealer's sales, service, or  
19 customer service performance that may materially affect the dealer,  
20 including, but not limited to, the dealer's right to payment under  
21 any incentive or reimbursement program or establishment of  
22 working capital requirements, unless both of the following  
23 requirements are satisfied:

24 (A) The performance standard, sales objective, or program for  
25 measuring dealership sales, service, or customer service  
26 performance is reasonable in light of all existing circumstances,  
27 including, but not limited to, the following:

28 (i) Demographics in the dealer's area of responsibility.

29 (ii) Geographical and market characteristics that affect vehicle  
30 shopping patterns and vehicle preferences in the dealer's area of  
31 responsibility.

32 (iii) The availability and allocation of vehicles and parts  
33 inventory available to and provided to the dealer and the number  
34 of units in operation of the line-make in the dealer's area of  
35 responsibility.

36 (iv) Local, statewide, and national economic circumstances.

37 (v) Historical sales, service, and customer service performance  
38 of the dealership and of the line-make within the dealer's area of  
39 responsibility, including vehicle brand preferences of consumers  
40 in the dealer's area of responsibility.

1 (B) The manufacturer, manufacturer branch, distributor,  
2 distributor branch, or affiliate provides all information used in  
3 establishing the performance standard, sales objective, or program  
4 for measuring dealership sales or service performance within 20  
5 days upon request by the dealer.

6 (2) In any proceeding under this subdivision in which the  
7 reasonableness of a performance standard, sales objective, or  
8 program for measuring dealership sales, service, or customer  
9 service performance is an issue, the manufacturer, manufacturer  
10 branch, distributor, distributor branch, or affiliate shall have the  
11 burden of proof. A performance standard that requires a dealer to  
12 achieve a minimum performance level based on average, median,  
13 or ranked metrics achieved by all or a comparative group of dealers  
14 with respect to sales, service, or customer service shall be presumed  
15 to be unreasonable.

16 (3) As used in this subdivision, “area of responsibility” shall  
17 have the same meaning as defined in subdivision (z) of Section  
18 11713.3.

19 SEC. 20. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section 17556 of  
25 the Government Code, or changes the definition of a crime within  
26 the meaning of Section 6 of Article XIII B of the California  
27 Constitution.